

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GWENDOLYN SMITH,

Plaintiff,

No. C 10-0996 PJH

v.

**ORDER TO SHOW CAUSE**

DOES 1-10; HOWARD ELAN;  
REVEREND ORACLE;  
BREAKTHROUGH INTERNATIONAL,  
INC.,

Defendants.

TO PLAINTIFF GWENDOLYN SMITH:

YOU ARE HEREBY ORDERED TO APPEAR ON JUNE 2, 2011, AND SHOW  
CAUSE why the above-entitled action should not be dismissed pursuant to Federal Rule of  
Civil Procedure 41(b) for failure to prosecute.

The original complaint was filed on March 8, 2010, against "John Does 1-10 d/b/a  
Straighttalknews.org." Plaintiff requested leave to proceed in forma pauperis ("IFP"), and  
that request was granted on June 8, 2010. The order stated that "the U.S. Marshal for the  
Northern District of California [shall] serve, without prepayment of fees, a copy of the  
complaint, any amendments, scheduling orders, attachments, plaintiff's affidavit and this  
order upon the defendant." On June 9, 2010, the clerk sent the first letter to plaintiff  
requesting addresses of defendants, so that they could be served by the U.S. Marshal.  
Plaintiff did not respond to this letter.

1 Plaintiff did, however, file a request for leave to subpoena records, stating that she  
2 needed to do so in order to learn the identity of the defendants. That request was granted  
3 on June 17, 2010. Plaintiff filed a second, similar request, which was granted on  
4 September 27, 2010.

5 Between May 2010 and February 2011, plaintiff filed five requests to continue the  
6 date for the initial case management conference. In the first, second, and third requests,  
7 filed May 28, 2010, August 5, 2010, and October 14, 2010, she stated that “DOE  
8 Defendant” had not yet been served. In the fourth request, filed December 27, 2010, she  
9 stated that “Defendants” had been identified [and] served,” and that “return of waiver of  
10 service of summons is pending.” In the fifth request, filed February 2, 2011, she stated that  
11 “Doe Defendant” had “not yet responded.”

12 During the same period, plaintiff also filed three requests for extensions of time for  
13 service. All three were granted – the last one on November 19, 2010.

14 On February 11, 2011, plaintiff filed a request for leave to amend the complaint,  
15 stating that she had “uncovered true individual and corporate identities of the primary Doe  
16 Defendants.” The court granted the request, and on February 18, 2011, plaintiff filed a first  
17 amended complaint, adding defendants “Howard Elan, a.k.a. Elan and Reverend Oracle,  
18 husband and wife; Breakthrough International, Inc., and Elan as President of Breakthrough  
19 International.”

20 On February 22, 2011, the clerk sent plaintiff another letter requesting the addresses  
21 of defendants for service. Plaintiff responded to the letter on March 11, 2011.

22 The U.S. Marshal attempted service of the summons and complaint at the address  
23 plaintiff provided for defendants Howard Elan, Reverend Oracle, and Breakthrough  
24 International, Inc., but was unable to effectuate service. The summonses were returned  
25 unexecuted as to Howard Elan and Reverend Oracle on March 30, 2011, and as to  
26 Breakthrough on May 5, 2011.

27 Under Federal Rule of Civil Procedure 4(m), the court must dismiss an action if the  
28 defendant is not served within 120 days after the complaint is filed, unless “the plaintiff

1 shows good cause for the failure,” in which case the court “must extend the time for service  
2 for an appropriate period.” Here, the complaint was filed more than 14 months ago, and  
3 the defendants still have not been served. The court has extended the time for service, but  
4 plaintiff has failed to satisfy her obligation to provide the court with an accurate address at  
5 which the defendants can be served by the U.S. Marshal.

6 The hearing on the order to show cause, and the case management conference, will  
7 be held on June 2, 2011, at 2:00 p.m., in Courtroom 3, 3rd Floor, Federal Building, 1301  
8 Clay Street, Oakland, California.

9 The court will not grant any further requests for a continuance. Failure to appear  
10 may result in the dismissal of this action.

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12 **IT IS SO ORDERED.**

13 Dated: May 10, 2011



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PHYLLIS J. HAMILTON  
United States District Judge